

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HAROLD CROCKER,

Plaintiff,

v.

**3:21-CV-266
(FJS/ML)**

**LINDSEY RUMENAPP and SAMUEL
SEARS,**

Defendants.

APPEARANCES

FINUCANE AND HARTZELL, LLP
6 North Main Street
Pittsford, New York 14534
Attorneys for Plaintiff

OF COUNSEL

LEO G. FINUCANE, ESQ.

SCULLIN, Senior Judge

ORDER

In an Order and Report-Recommendation dated April 19, 2021, Magistrate Judge Lovric, after a thorough analysis of Plaintiff's complaint, recommended that the Court (1) accept for filing Plaintiff's complaint insofar as "it asserts a claim of excessive force pursuant to the Fourth Amendment against Defendants in their individual capacities"; (2) "dismiss without leave to replead Plaintiff's Complaint . . . to the extent that it asserts claims against Defendants in their official capacities"; and (3) "dismiss with leave to replead Plaintiff's Complaint . . . to the extent that it asserts claims pursuant to New York state law against Defendants in their individual capacities, for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)[.]" *See* Dkt. No. 3 at 13.

Plaintiff has no objections to Magistrate Judge Lovric's April 19, 2021. *See* Dkt. No. 4.

"When a party does not object to a magistrate judge's recommendations, the court reviews those recommendations for clear error or manifest injustice." *Ward v. Lee*, No. 9:16-CV-1224 (FJS/CFH), 2018 WL 3574872, *1 (N.D.N.Y. July 25, 2018) (citation omitted). "After conducting this review, 'the Court may "accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting [*Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009)] (quoting 28 U.S.C. § 636(b)(1)(C))).

The Court has reviewed Magistrate Judge Lovric's recommendations for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Lovric's April 19, 2021 Order and Report-Recommendation, *see* Dkt. No. 3, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's complaint, *see* Dkt. No. 1, is **ACCEPTED for filing** to the extent that it asserts a claim of excessive force pursuant to the Fourth Amendment to the United States Constitution, brought pursuant to 42 U.S.C. § 1983, against Defendants in their individual capacities; and the Court further

ORDERS that the Clerk of the Court shall issue Plaintiff the summonses and General Order #25 so that he can serve the summons and complaint on Defendants; and the Court further

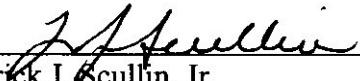
ORDERS that, to the extent that Plaintiff's complaint asserts claims against Defendants in their official capacities, those claims are **DISMISSED without leave to replead**; and the Court further

ORDERS that, to the extent that Plaintiff's complaint asserts claims pursuant to New York state law against Defendants in their individual capacities, those claims are **DISMISSED with leave to replead**; and the Court further

ORDERS that, if Plaintiff wishes to file an amended complaint, he must do so on or before **July 1, 2021**.

IT IS SO ORDERED.

Dated: June 25, 2021
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge